

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AMERICAN COMMERCIAL LINES, LLC, et al.,

Plaintiffs,

-against-

09 Civ. 7957 (LAK)

WATER QUALITY INSURANCE SYNDICATE,

Defendant.
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ORDER

LEWIS A. KAPLAN, *District Judge*.

Plaintiffs move for partial summary judgment dismissing six of defendants' affirmative defenses. [DI 46] Defendant cross-moves for partial summary judgment declaring that there is no coverage for reimbursement of any of the disputed defense costs incurred by plaintiff during Phases I and II because it failed to seek or obtain defendant's prior consent therefor. [DI 58]

In a thorough report and recommendation dated January 16, 2014, Magistrate Judge James C. Francis, IV, recommended that plaintiff's motion be granted as to the First, Second, Third, Fourth and Seventh and part of the Sixth Affirmative Defenses and other wise denied and that defendant's cross-motion for a declaration be granted (the "R&R").

Plaintiff objects to so much of the R&R as concluded that did not repudiate all coverage under Coverage C to reimburse investigation and defense costs incurred after August 27, 2008. It claims that the undisputed facts demonstrate a repudiation.

The Court has considered the parties submissions carefully. It concludes that there is no merit to the objection. Accordingly, the objection is overruled. Plaintiffs' motion for partial summary judgment [DI 46] is granted to the extent set forth in the R&R and otherwise denied. Defendant's cross-motion for partial summary judgment [DI 58] is denied.

Defendant shall settle a detailed order on two business days' notice.

SO ORDERED.

Dated: March 31, 2014



Lewis A. Kaplan
United States District Judge